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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,431

01/28/2005

Hubert Sjoerd Blaauw

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06/04/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

LANDRUM, EDWARD F

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/523,431</p>	<p><b>Applicant(s)</b> BLAAUW ET AL.</p>	
	<p><b>Examiner</b> Edward F. Landrum</p>	<p><b>Art Unit</b> 3724</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
The 103 rejections still read on the claims.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724

Continuation of 3. NOTE: The term "continuously" when discussing a continuously decreasing hardness of the diffusion layer is new matter in both the claims and now the proposed amendment to the specification. As stated previously, the figures cannot be considered to scale and therefore cannot be used to teach continuously decreasing hardness. .

Continuation of 13. Other: Applicant's amendment the specification does overcome the drawing objection, however the phrase "continuously decreasing hardness" is new matter as Figure 6 is not detailed enough to show that there are no plateaus etc that would make the hardness not continuously decreasing. Furthermore, the phrase "the original hardness of the steel is 200 HV" is new matter because Figure 6 does not disclose that 200HV is the original material hardness. The entire amendment may also be considered new matter because Example 1 discusses the process using a maraging steel. Based on Figure 4 and Example 1 a maraging steel does not have an HV below 500. Furthermore, it is never stated that Figure 6 is teaches using a steel, only that there are compound layers.

The claim objections directed towards claims 4, 13, and 25-27 have been overcome based on applicant's remarks.

The 112<sup>1st</sup> rejection directed towards the cancelled phrase "hardened simultaneously by precipitationally hardening the stainless steel" would be overcome.

Regarding Rosenhan it is examiner's opinion that the phrase "combined with" is synonymous to the term "simultaneously". Furthermore the act of precipitationally hardening the steel while simultaneously plasma nitriding the steel is an obvious design choice as disclosed by applicant in lines 26-28 of page 4. It appears that the combination of precipitation hardening and plasma nitriding is important and not the timing of the two relative to each other.

As previously stated by the examiner, because of the intrinsic properties associated with plasma nitriding, if the hardness of the core steel of Rosenhan had been the same as the hardness of the plasma nitrided outer layer the center of the diffusion layer would have been the least hard. The cited NPL explains this, therefore the location of the least hard portion of the diffusion layer is more dependent on the original hardnesses of both compound layers and is just a product of the diffusion process.

Applicant has employed an old and well known method of plasma nitriding (page 5, line 17), and it does not appear that anything beyond claiming plasma nitriding a steel that has been precipitationally hardened would not be intrinsic in the plasma nitriding process. Applicant is invited to provide an affidavit that scientifically and mathematically states the claimed subject matter is not intrinsic based on the process used and the article receiving the process.